

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

Benjamin Nelson Strange,)
)
Plaintiff,)
)
vs.)
)
Wells Fargo Bank,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
THIRD JUDICIAL CIRCUIT

ORDER DENYING PLAINTIFF’S MOTION
TO ALTER, AMEND AND RECONSIDER

RECEIVED
Jul 20 2023
SC Court of Appeals

Before the Court is the plaintiff’s motion to alter, amend and reconsider the Court’s Form 4 Order signed 9/7/2022 and filed 9/8/2022 dismissing the plaintiff’s action for “improper service of process.” For the reasons set forth below, the plaintiff’s motion is denied to the extent plaintiff seeks relief from the Court’s dismissal of his Complaint. However, the motion is granted to the extent that the dismissal of the plaintiff’s action is based upon the plaintiff’s failure to prosecute and not improper service of process.¹

Based upon the plaintiff’s motion filed 9/19/2022, the plaintiff’s memorandum in support of his motion filed 11/23/2022 and the defendant’s memorandum in opposition to the motion filed 12/9/2022,² I do hereby find the following salient facts and conclusions of law:

FINDINGS OF FACT

The Plaintiff filed this case on July 29, 2021, but failed to timely file any proof of service showing proper service of process of the Summons and Complaint upon the defendant. Seven

¹ The Court does not rule that service was proper. Rather, the Court’s review of the record clearly indicates that dismissal is appropriate due to the plaintiff’s failure to prosecute. The Court’s prior ruling that service was improper was based solely on the uncontested argument of defendant’s counsel at the motion hearing without participation by the plaintiff’s attorney.

² This motion is decided on briefs without oral arguments.

months later, on February 28, 2022, due to plaintiff's failure to file a proof of service with the Clerk of Court or otherwise take any action to prosecute the case, the Sumter County Clerk of Court filed and served plaintiff's attorney with a "Dormant File Notice (No Proof of Service)" advising plaintiff's attorney of the requirements of Rule 5(d), SCRCF. The Dormant File Notice further advised plaintiff's attorney as follows:

Court records indicate that the Summons and Complaint in the above referenced action was filed on July 29, 2021, with the Sumter County Clerk of Court. No proof of service has been filed since that time and the Clerk of Court has requested that this action be dismissed. Please respond within ten (10) days of the date of this letter with the appropriate motion or Affidavit of Service. This case will be dismissed pursuant to South Carolina Rule of Civil Procedure 5(d) if you do not timely respond.

On April 26, 2022, the defendant filed its Motion to Dismiss. On April 29, 2022, the plaintiff filed a proof of service with the Clerk of Court indicating service of the Summons and Complaint on the defendant on October 28, 2021.

CONCLUSIONS OF LAW

Rule 5(d), SCRCF, states in pertinent part as follows:

The summons and complaint shall be filed [with the Clerk of Court] before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application by any party.

In the case at hand, the plaintiff did not file proof of service of the Summons and Complaint until April 29, 2022; almost six months after the pleadings were served on the defendant, two months after receiving the Dormant File Notice and three days after the defendant filed its Motion to Dismiss. Rule 5(d), SCRCF, required the plaintiff to file proof of service by November 7, 2021. The Notice of Dormant File advised the plaintiff that the action would be dismissed if the proof of

service was not filed by March 10, 2022. Therefore, dismissal of the plaintiff's action is appropriate.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the plaintiff's Motion to Amend, Alter and Reconsider filed September 19, 2022 is DENIED.

AND IT IS SO ORDERED.



Sumter Common Pleas

Case Caption: Benjamin Strange VS Brenda Jane Ballentine , defendant, et al

Case Number: 2021CP4301284

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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